

V

Valuation

WAC 332-30-122: Aquatic land use authorization.

(3) Rents and fees.

(a) When proposed uses of aquatic lands requiring an authorization instrument (other than in harbor areas) have an identifiable and quantifiable but acceptable adverse impact on state-owned aquatic land, both within and without the authorized area, the value of that loss or impact shall be paid by the one so authorized in addition to normal rental to the department or port as is appropriate.

(b) Normal rentals shall be calculated based on the classification of the aquatic land use(s) occurring on the property. Methods for each class of use are described in specific WAC sections.

WAC 332-30-106 Definitions.

(19) "Fair market value" means the amount of money which a purchaser willing, but not obligated, to buy the property would pay an owner willing, but not obligated, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied (Donaldson v. Greenwood, 40 Wn.2d 238, 1952). Such uses must be consistent with applicable federal, state and local laws and regulations affecting the property as of the date of valuation.

Discussion on valuation

The department has the responsibility to ensure that Washington citizens receive a fair return in exchange for granting exclusive use of state-owned aquatic lands to private parties or other government agencies. A decision on the value or rent for use of aquatic lands is separate from the

decision on whether a proposed use is appropriate for state-owned aquatic land.

The method and purpose of determining a value for state-owned aquatic lands varies greatly, depending on the use.

For some uses of state-owned aquatic lands, rents are established by statute. The valuation process is set forth in these statutes and accompanying regulations. These uses include:

- # Water-dependent uses. SEE ALSO: Water-dependent uses.
- # Log storage. SEE ALSO: Log booming and storage.
- # Public parks. SEE ALSO: Public use and access.
- # Public utility lines. SEE ALSO: Utility lines.
- # Disposal of dredged materials. SEE ALSO: Sediments.

In other situations, either statutes do not specify rent or a rent formula, or the department has other reasons to determine a value or rent for these lands. In general, the department is to charge "fair market rental value," which may vary greatly with the land, the use, and the circumstances. In these situations, the department has greater discretion on valuation, and the department's approach to valuation will have greater impact on the public benefits provided by aquatic lands. These situations are:

- # Nonwater-dependent uses, including residential uses, hotels, contaminated sediment disposal sites, and other uses that could be located on uplands. SEE ALSO: Nonwater-dependent uses; Residential uses; Sediments.
- # Linear projects involving easements or rights-of-way for roads, bridges, private outfalls and utility lines, and fiber optic cables. SEE ALSO: Linear projects; Bridges and roads; Outfalls; Utility lines.
- # Exchanges of aquatic lands to ensure that the land received by the state is of at least equal market value

and of greater public benefit than the land given up. SEE ALSO: Exchanges and acquisitions.

- # Natural resource damage assessments and trespasses, to calculate the land or resource value lost due to harm to or unauthorized uses on state-owned aquatic lands. SEE ALSO: Natural resource damage assessments; Unauthorized uses.
- # Aquaculture or mining. These require a rent determination only when the user will control the land for a period of time, and will not just harvest the resource. SEE ALSO: Aquaculture; Mining and prospecting.

The Division is working to develop more complete guidance on valuation as it applies to fair market rental value and to the many circumstances where there is no strict statutory formula. Until this guidance is complete, staff should apply these general principles:

- # The method for determining valuation should be consistent from case to case, even if the results of that method vary with the specific circumstances.
- # The department must maintain the contractual rights and practical capacity to negotiate additional compensation as appropriate in the future, such as from increases in service from the project.
- # The department should use consistent valuation methodologies between upland and aquatic programs, though the values for each portion of the project may not be identical.
- # When two or more projects are in a combined area or corridor, the department will require payment of full market value rent from each project separately.

- # Applicable valuation examples can be found elsewhere on state-owned aquatic lands or state-owned uplands, or from other agencies, other states or other landowners.

The department should consider, at a minimum, these elements of valuation:

- # The uses that are currently occurring on the land, and are planned for the future, and the effect of the project on those uses.
- # The value of services or facilities that may be provided by the department, such as an existing corridor.
- # Legal, financial, or environmental liabilities that currently exist, may exist or may be created by the project.
- # The value of the proposed linear project to every party, both financial and as a benefit or service, clearly identifying who realizes that value and how;
- # Changes in service and income that may occur for this linear project in the future that might affect the value appropriately received by the state.

VALUATION: NONWATER-DEPENDENT RENT

SEE: Nonwater-dependent uses.

VALUATION: RENT

SEE: Rent.

VALUATION: WATER-DEPENDENT RENT

SEE: Water-dependent uses.

Vegetation, aquatic

RCW 79.01.800: Seaweed--Marine aquatic plants defined.

Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter. "Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta.

RCW 79.01.805: Seaweed--Personal use limit--Commercial harvesting prohibited--Exception--Import restriction.

- (1) The maximum daily wet weight harvest or possession of seaweed for personal use from all aquatic lands as defined under RCW 79.90.010 and all privately owned tidelands is ten pounds per person. The department of natural resources in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.
- (2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from aquatic lands as defined under RCW 79.90.010, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.
- (3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.
- (4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall

incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies.

RCW 79.01.810: Seaweed--Harvest and possession violations-- Penalties and damages.

It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.01.805. A violation of this section is a misdemeanor punishable in accordance with RCW 9.92.030, and a violation taking place on aquatic lands is subject to the provisions of RCW 79.01.760. A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on private tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

RCW 79.01.815: Seaweed--Enforcement.

The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.01.805 and 79.01.810.

WAC 332-30-154: Marine aquatic plant removal (RCW 79.68.080).

[Note: The harvest amount restrictions in RCW 79.01.805 contradict WAC 332-30-154, and the RCW takes precedence.]

- (1) Any species of aquatic plant may be collected from aquatic land for educational, scientific and personal purposes up to 50 pounds wet weight per year, except that no annual species can be collected in excess of fifty percent of its population's total wet weight in any 1 acre area or any perennial in excess of seventy-five percent of its population's total wet weight in any 1 acre area.
- (2) Aquatic plants listed on the commercial species list may be collected without a permit from aquatic land for commercial purposes up to the limits noted on the list, except that no annual species can be collected in excess of fifty percent of its

population's total wet weight in any 1 acre area or any perennial in excess of seventy-five percent of its population's total wet weight in any 1 acre.

(3) Aquatic plants may be collected from aquatic land for educational, scientific or personal purposes beyond the weight limitations stated in subsection (1) only through benefit of an aquatic plant removal permit from the department. Payment of a royalty dependent on species, volume and use shall be a condition of the permit.

(4) Aquatic plants as listed on the commercial species list may be collected from aquatic land for commercial purposes beyond the weight limitations stated in subsection (2) only through benefit of an aquatic plant removal permit from the department. Payment of a royalty dependent on species, volume and use shall be a condition of the permit.

(5) Aquatic plants may not be removed from the San Juan Marine Reserve except as provided for in RCW 28B.20.320 and from other areas where prohibited.

(6) Removal of perennial plants must be in such a manner as to maintain their regeneration capability at the site from which they have been collected.

(7) Species may be deleted or added to the commercial species list through petition to the department.

(8) Species not on the commercial species list may be collected for purposes of market testing, product development, or personal use through either written authorization from the department or through an aquatic plant removal permit depending on the amount of plant material required.

(9) Commercial species list.

<u>Species Name</u>	<u>Maximum Free Collection Weight</u>
<i>Alaria marginata</i> Post. et Rupr	50 pounds wet weight
<i>Cymathere triplicata</i> (Post.et Rupr) J.Ag	50 pounds wet weight
<i>Gracilaria sjoestedtii</i> Kylin . .	10 pounds wet weight
<i>Gracilaria verrucosa</i> (Huds) Papenf	10 pounds wet weight
<i>Iridaea cordata</i> (Turner) Bory	50 pounds wet weight

<i>Laminaria dentigera</i> (Kjellm.) (L. setchellii Silva)	50 pounds wet weight
<i>Laminaria groenlandica</i> Rosenvinge	50 pounds wet weight
<i>Laminaria saccharina</i> (L.) Lamouroux	100 pounds wet weight
<i>Macrocystis integrifolia</i> Bory.	100 pounds wet weight
<i>Monostroma</i> spp.	20 pounds wet weight
<i>Neoagardhiella baileyi</i> . (Harvey et Kutzing) Wynne et Taylor	30 pounds wet weight
<i>Porphyra</i> spp. . .	10 pounds wet weight
<i>Ulva</i> spp	20 pounds wet weight

(10) Harvesting of fishery resources adhering to marine aquatic plants, such as fish eggs, must be according to the law and as specified by the department of fisheries. A permit may also be required according to WAC 332-30-154(4).

Discussion on vegetation, aquatic

Aquatic vegetation – also known as seaweed or marine aquatic plants – includes a variety of marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form. It forms the base of the aquatic food web and provides critical functions for aquatic environments by providing food, shelter, and spawning grounds for a variety of fish and other marine organisms. Kelp and eelgrass, two major types of aquatic plants found in Washington, provide food and habitat for fish, invertebrates, birds and marine mammals, and also help protect the shoreline from wave energy.

Most vegetated aquatic habitat is on land managed by the department. The importance of aquatic vegetation has been

recognized by the Growth Management Act in the requirement that counties develop plans to protect critical aquatic habitat such as eelgrass, kelp, and salt marsh plants. SEE ALSO: Growth Management Act.

To survive and thrive, aquatic plants need the right type of substrate, wave exposure, salinity, light and nutrients. Changes in these essential elements can damage or kill the plants. These plants also can be damaged by physical destruction, poor water quality, shading from structures, decrease in light levels because of increased sediment or plankton/algae in the water, a change in wave exposure, or a change in substrate type. The department is committed to protecting aquatic vegetation as part of ensuring environmental protection on aquatic lands. SEE ALSO: Environmental protection.

Aquatic vegetation can be harvested recreationally. However, the harvest amount restrictions in RCW 79.01.805 contradict WAC 332-30-154. The RCW takes precedence, so recreational harvest of seaweed is limited to 10 pounds and commercial harvest is prohibited, regardless of the WAC. An exception is *Macrocystis* (giant kelp), which is used for the commercial herring-roe-on-kelp fishery. However, there has been no recent roe fishery because of the current status of herring stocks. The Washington Department of Fish and Wildlife (WDFW) enforces RCW 79.01.805, and recreational seaweed harvesting requires a personal use/seaweed license issued by the WDFW. SEE ALSO: Regulatory agencies and permits.